

No. _____

UNITED STATES COURTS OF APPEALS
FOR THE ELEVENTH CIRCUIT

IN RE: JOHN ANTHONY CASTRO,

Petitioner

On Petition for a Writ of Mandamus to the United States

District Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

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CERTIFICATE AS TO PARTIES

The parties in the district court proceeding, Case No. 23-80015-CIV-CANNON, are as follows:

The Plaintiff is JOHN ANTHONY CASTRO.

Defendants is DONALD J. TRUMP.

PETITION FOR WRIT OF MANDAMUS

RELIEF SOUGHT

Pursuant to 28 U.S.C. § 1651 and Federal Rule of Appellate Procedure 21, John Anthony Castro respectfully petitions this Court to issue a Writ of Mandamus, in aid of its appellate jurisdiction, directing the United States District Court for the Southern District of Florida West Palm Beach Division to issue a ruling on Defendant Donald J. Trump's Motion to Dismiss in the now pending in the case: *John Anthony Castro, Plaintiff v. Donald J. Trump, Defendant, No. 23-80015-CIV-CANNON*.

ISSUE PRESENTED

Has there been a usurpation of judicial power or clear abuse of discretion by United States District Judge Aileen Cannon of the Southern District of Florida West Palm Beach Division by failing to consider the pending Motion to Dismiss for more than 90 days?

STATEMENT OF FACTS

On January 6, 2023, Plaintiff John Anthony Castro filed this civil action against Defendant Donald J. Trump seeking a declaratory judgment that Mr. Trump is constitutionally ineligible to hold public office pursuant to Section 3 of the 14th

Amendment for his aid and comfort to the convicted insurrectionists that violently attacked our United States Capitol on January 6, 2021.

On February 15, 2023, Defendant Donald J. Trump filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim in this cause.

On February 28, 2023, Plaintiff filed his Response in Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim.

On March 7, 2023, Defendant filed his Reply to the Response at which point the issue was fully briefed.

On May 22, 2023, Plaintiff filed a Motion for Ruling and to Expedite Consideration informing Judge Cannon of Plaintiff's intent to file a Writ of Mandamus if the Court continued to usurp federal judicial power by withholding consideration of ruling on the merits of the Motion to Dismiss.

As of today, ninety (90) days has passed without a ruling.

REASONS WHY THE WRIT SHOULD BE ISSUED

The U.S. Supreme Court has held that a writ of mandamus is appropriate where "there is a usurpation of judicial power."¹

¹ *Schlagenhauf v. Holder*, 379 U.S. 104 (1964).

This is the second time Petitioner is before this Honorable Circuit regarding Judge Cannon. This Honorable Circuit gave Judge Cannon the benefit of the doubt in refusing to mandamus her disqualification from this case of national importance despite a prior finding she had abused her discretion to unconstitutionally interfere in the criminal investigation of Defendant Donald J. Trump.

Now it is quite clear she has no intention of issuing a ruling because there is no good outcome for Defendant Donald J. Trump. If she rules Plaintiff has no standing, this Honorable Circuit will have appellate review to swiftly overturn that decision streamlining a decision on the merits. If she rules there is no claim upon which relief can be granted, it's an implicit ruling that Section 3 of the 14th Amendment is not self-executing, which negates a defense to criminal prosecution once used by Jefferson Davis at his criminal trial for treason and possibly available to Defendant Donald J. Trump should Special Prosecutor Jack Smith bring an indictment for insurrection. If she finds there is a claim upon which relief can be granted in order to preserve that possible defense to criminal prosecution, she opens the door to appellate review of whether Defendant Donald J. Trump is constitutionally ineligible for public office. Because there is no good outcome for Defendant Donald J. Trump, Judge Cannon has chosen to simply withhold consideration entirely; usurping judicial power.

Judge Cannon has cited no grounds for the delay.² Petitioner contends that the sole purpose is to insulate herself from appellate review, delay a ruling on Defendant Donald J. Trump's constitutional eligibility to hold public office, and increase the likelihood of the issue becoming either moot or barred from consideration by the political question doctrine should Defendant Donald J. Trump secure the nomination of the Republican Party before a filing ruling on the merits.

CONCLUSION

For the reasons and authorities stated herein, Castro petitions this Court to issue this Writ of Mandamus to compel the lower Court to rule on the merits of the pending Motion to Dismiss, which is a matter of national importance.

Dated: June 5, 2023

Respectfully submitted,

By:



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² *Euromepa, S.A. v. R. Esmerian, Inc.*, 154 F.3d 24, 30 (2d Cir. 1998). The Court found the reasoning behind the delay to be a *de facto* stay of proceedings pending resolution of a foreign legal matter to determine mootness; as such, it was not an abuse of discretion.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitation of Rule 21(d)(i) of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this brief, the brief contains 1024 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and complies with the type style requirement of Fed. R. App. P. 32(a)(6), because it has been prepared in a 14 point proportionally spaced roman-style typeface (Times New Roman).

/s/ John Anthony Castro
John Anthony Castro

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2023, a true and accurate copy of the foregoing Petition for a Writ of Mandamus with accompanying Exhibits (if any) was served via U.S. First Class Mail and email on the following:

Donald J. Trump
71100 S. Ocean Blvd
Palm Beach, Florida 33480

/s/ John Anthony Castro
John Anthony Castro